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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/389,399	02/16/95	JOHNSON	L 215778

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TUCKER EXAMINER

ART UNIT PAPER NUMBER

3309

DATE MAILED:

08/05/96

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

**Office Action Summary**

Application No.

08/389,399

Applicant(s)

Johnson

Examiner

Guy Tucker

Group Art Unit

3309

 Responsive to communication(s) filed on Apr 1, 1996. This action is FINAL. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims** Claim(s) 1-5 and 7-13 is/are pending in the application.Of the above, claim(s) 9-13 is/are withdrawn from consideration. Claim(s) \_\_\_\_\_ is/are allowed. Claim(s) 1-5, 7, and 8 is/are rejected. Claim(s) \_\_\_\_\_ is/are objected to. Claims \_\_\_\_\_ are subject to restriction or election requirement.**Application Papers** See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner. The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119** Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All  Some\*  None of the CERTIFIED copies of the priority documents have been received. received in Application No. (Series Code/Serial Number) \_\_\_\_\_. received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)** Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit 3309

The objections to the disclosure and to the drawings made by the examiner in Paper No. 3 are withdrawn in view of the applicant's amendments.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 7 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Davis (5,190,548). Davis discloses an instrument for forming a bore comprising a handle (unshown chuck attached to 22), a rod (12), and a means for engaging (34). Note that opposite 34's extend along a plane (see figure 2). Note that the intended use of the claimed device has been considered but does not serve to structurally distinguish the claim over the applied reference. Regarding claim 2, see figure 2.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Art Unit 3309

Claim 3 is rejected under 35 U.S.C. § 103 as being unpatentable over Davis (5,190,548) in view of Borzone et al (5,122,134). Davis discloses the invention substantially as claimed as discussed above. However, Davis does not disclose semi-elliptical fins. Borzone et al teaches semi-elliptical fins in the same field of endeavor for the purpose of efficient cutting (see column 2 lines 4 and 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Borzone et al, to make the fins of Davis semi-elliptical in order to make the cutting more efficient.

Applicant's arguments filed 4-1-96 have been fully considered but are not deemed to be persuasive.

The applicant argues that Davis does not anticipate claim 1. The examiner, respectfully, disagrees. Davis discloses all positively set forth structural features recited in claim 1. The examiner concedes that the purpose of Davis is far from the use of the applicant's device, but there are no structural differences brought out in claim 1.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED

Art Unit 3309

STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. §1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Guy Tucker at telephone number (703) 308-3271. Examiner Tucker can normally be reached on Monday through Thursday from 7:00 AM to 5:30 PM, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, examiner Tucker's supervisor, Michael Buiz, can be reached at (703) 308-0871. The fax number for Group 3300 is (703) 305-3590 or 3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 3300 receptionist at (703) 308-0858.

GVT  
August 4, 1996

  
GUY V. TUCKER  
PRIMARY EXAMINER  
GROUP 3300